

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 25 1994

In the Matter of)
)
Petition Filed By Comsat Corporation For) RM-7913
Partial Relief From Current Regulatory)
Treatment of Comsat World Systems' Services)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

OPPOSITION OF PANAMSAT, L.P.

On July 1, 1994, Comsat Corporation ("Comsat") filed the above-captioned Petition for Partial Relief ("Petition"). PanAmSat, L.P. ("PanAmSat"), by its attorneys, hereby opposes Comsat's Petition.

I. INTRODUCTION/SUMMARY OF ARGUMENT

Comsat's Petition addresses two separate but related matters. First, Comsat seeks to supplement the record in RM No. 7913, the proceeding in which Comsat, in 1992, sought price cap treatment for its switched-voice services. Second, Comsat requests that it be permitted to follow the "streamlined" procedures that apply to tariff filings by non-dominant common carriers, rather than the tariff requirements that now apply to Comsat and other dominant carriers. In support of its request, Comsat relies on a one-volume study, prepared by consultants hired by Comsat, examining the extent to which Comsat's statutory monopoly continues to convey market power. Based on this study, Comsat concludes that its monopoly "no longer confers upon Comsat any market power." Petition at 4.

PanAmSat opposes Comsat's Petition in all respects. PanAmSat is the first operating U.S. separate satellite system. Its in-orbit satellite, PAS-1, provides voice, video, and data services between and among countries in North and South America, the Caribbean, and Europe. PanAmSat recently launched its PAS-2 satellite, which will be used to serve the Pacific Ocean Region.

First, this is the wrong time and the wrong place for what Comsat has requested. The executive and legislative branches of the U.S. government presently are examining the futures of Intelsat, Inmarsat, and Comsat. In that context, the government is taking

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pains to ensure that Comsat cannot abuse its monopoly position during the transition from a marketplace characterized by intergovernmental organizations with special privileges and immunities to a marketplace with fully-privatized entities, and from a marketplace dominated by government-sanctioned monopolies to a marketplace that is fully competitive. Comsat's Petition seeks an end-run around these government proceedings; could force the Commission to squander its valuable resources by engaging in duplicative efforts; and runs counter to the government's efforts to keep Comsat's monopoly power in check during the transition period. Since privatization is simply a concept at this stage, moreover, Comsat's Petition must be evaluated in the present context of Comsat's statutory monopoly.

Second, Comsat's analysis of the market for public switched services is flawed, and the competition Comsat claims it faces from undersea cable systems is overstated. In fact, Comsat is guaranteed a significant share of the public switched market by virtue of Comsat's long-term arrangements with international carriers; by the inability of undersea cables to compete effectively for thin-route and remote area traffic; by the need for PTTs worldwide to recover their sunk investment in the Intelsat system; and by the general preference of carriers for deploying a mix of cable and satellite facilities. Similarly, to date Comsat faces virtually no competition from separate systems for switched services.

Third, Comsat's market power in connection with public switched services leaves it in a position to cross-subsidize and engage in other anticompetitive practices when it competes with separate systems for video and private line customers. It is essential, therefore, that Comsat's video and private line offerings be structurally separated from its public switched offerings. The Commission already has under consideration a proceeding requested by PanAmSat to revisit Comsat's structure, and structural issues also are being considered in the government's interagency review. Absent additional structural protections, considering whether to change the rules governing Comsat's tariffs for video and private line services would be inappropriate. Once structural protections are in place, however, PanAmSat would not object to streamlined tariff procedures for Comsat's competitive (i.e., non-public switched) Intelsat space segment services.

Finally, Comsat's Petition leaves unchanged the factors warranting denial of its 1992 request for price cap treatment. It remains the case that applying price cap treatment to Comsat's switched-voice services would exacerbate the potential for cross-subsidization, and could lead to higher rates than would otherwise occur. In this

regard, PanAmSat hereby incorporates by reference its April 6, 1992, opposition to Comsat's price cap request.

For all of these reasons, Comsat's Petition should be denied.

II. THE COURSE CALLED FOR IN COMSAT'S PETITION IS INEFFICIENT AND COUNTERPRODUCTIVE, AND WOULD UNDERCUT GOVERNMENT PROCEEDINGS THAT ARE UNDERWAY.

As the Commission is aware, the U.S. government is considering fundamental changes in the structure and operations of Comsat, Intelsat, and Inmarsat. The Commission, the Department of Commerce, and the Department of State, along with a number of other government agencies and offices, have formed an ad hoc interagency task force to develop a government position on the futures of Comsat, Intelsat, and Inmarsat. The House of Representatives' Committee on Energy and Commerce (Subcommittee on Telecommunications and Finance) recently held hearings focusing on these issues.¹

The participants in the House hearings, including Chairman Hundt and Chairman Markey, repeatedly voiced concern about Comsat's ability to abuse its market power before the transition to a privatized Intelsat/Inmarsat, and a fully competitive marketplace, can be achieved. For example, Chairman Markey called for "changes in the rules guiding Comsat" during this transition, to avoid "locking in anticompetitive advantages for Comsat that were bestowed by statute and not earned in the marketplace." He stated that "the vigorous oversight of the government" will be required to ensure, until a level playing field is established, "that Intelsat is not permitted to cross-subsidize into areas where it is receiving competition in the marketplace."

Chairman Hundt concurred. He stressed the need for "antitrust-type scrutiny of ... emerging satellite markets," to guard against having an "incumbent with large market share" use "questionable pricing or other practices" to "maintain its monopoly share." He also emphasized that antitrust considerations make it "important to eliminate [Intelsat's and Inmarsat's] privileges and immunities."

Granting Comsat's Petition would undercut the government's efforts. The government is attempting to prevent Comsat from abusing its statutory monopoly until

¹ Oversight Hearing on the Global Information Infrastructure, Focusing on the Creation of a Competitive Satellite Industry and on Proposals for the Privatization of Intelsat and Inmarsat (July 28, 1994).

full competition is achieved. Comsat's Petition seeks to reduce or eliminate the safeguards that are needed to have meaningful government oversight.

The course called for in Comsat's Petition, moreover, is wasteful and inefficient. It would be a poor use of the Commission's limited resources to have to evaluate Comsat's one-volume study of marketplace conditions at the same time that an interagency task force is considering similar issues in another context. Comsat has a full and fair opportunity to make its views known in the interagency review.

It should be apparent from the foregoing that Comsat's Petition should be denied without further consideration. Comsat's request is at cross-purposes with the efforts of three government agencies and the U.S. Congress, and jeopardizes their efforts to keep Comsat in check while conditions are established for a competitive marketplace.²

III. COMSAT HAS MARKET POWER IN THE PROVISION OF PUBLIC SWITCHED SERVICES.

For the most part, Comsat's Petition does not distinguish between public switched services and other services. That distinction, however, is critical, because the Commission has found that "IMTS and non-IMTS" are "two distinct product markets." International Competitive Carrier Policies, 102 F.C.C.2d 812, 823 (1985). Moreover, the extent of competition in the public switched and non-public switched markets is radically different. Accordingly, PanAmSat addresses these distinct markets separately herein.

Comsat questions whether its statutory monopoly gives it market power in connection with the provision of public switched services. Comsat relies on what it claims is competition in this market from undersea cables and separate systems. Comsat, however, has overlooked the legal, technical, and financial factors that make satellite services and undersea cable services imperfect substitutes for one another, and

² Comsat suggests that it has focused on tariff procedures, rather than requesting "a rulemaking proceeding to change its carrier classification status to non-dominant," in consideration of "strained Commission resources." Petition at 34. In fact, however, Comsat's Petition requests the functional equivalent of a change to non-dominant classification. The two principal regulatory differences between dominant and non-dominant international carriers are tariff requirements, for purposes of which Comsat has asked to be treated as non-dominant, and the requirement that dominant carriers obtain additional Section 214 authority to add circuits to countries for which they already have authority, which is inapplicable to Comsat since the Commission authorizes its satellites to serve designated countries on a "blanket" basis.

that give Comsat a sheltered market. Comsat, moreover, at present faces minimal competition from separate systems for public switched service customers.

A. COMSAT IS SHELTERED FROM PUBLIC SWITCHED COMPETITION FROM UNDERSEA CABLES.

Undersea fiber optic cables do not provide effective competition to satellites, because they exist almost exclusively on high-density routes across the Atlantic and Pacific Oceans. For most of the rest of the world, including particularly most of the developing world, there is no competition for international traffic between satellites and undersea cables. Comsat's argument regarding fiber competition thus applies, at best, to limited geographical areas, with an absence of media diversity -- and hence of satellite-cable competition -- in much of the rest of the world.

It is also the case that, in international communications, intermedia competition is limited by common ownership factors. The foreign ends of most international cables are controlled by the same entities that hold ownership interests in Intelsat. Because these foreign entities have embedded investments in the Intelsat system and an interest in preserving the financial strength of Intelsat, the decision between international cable and satellite facilities is not made on the basis of market forces, but rather is a corporate decision regarding allocation of traffic. Most carriers and administrations, moreover, prefer to use a mix of satellite and cable facilities for restoration purposes. See International Competitive Carrier Policies, supra, 102 F.C.C.2d at 838.

In addition, Comsat's competition from cables is limited by the "long-term fixed-price contracts" that Comsat put in place as a substitute for the FCC's "balanced loading" requirements. See Comsat Petition for Rulemaking in RM No. 7913 ("Rate Cap Petition") (Jan. 30, 1992) at 3, 5. As Comsat elsewhere has conceded, these contracts not only guarantee it a substantial quantity of AT&T's and MCI's current traffic, but also an opportunity to grow along with these carriers' "growth traffic" over time. Id. at 10. Comsat's long-term agreements eliminate price elasticity for a significant part of the public switched market, because the agreements guarantee that traffic will be carried by Comsat regardless of the price or quality of services offered by potential competitors. It is a matter of public record that Comsat entered into new long-term agreements with AT&T, Sprint, and MCI in 1993, thereby assuring that Comsat will have a significant share of the public switched market beyond the turn of the century.

Comsat's Petition documents Comsat's stranglehold outside the high-density routes traversed by undersea cables. According to Comsat's own consultants, Comsat's

share of switched voice traffic in these regions is "close to 100%." Brattle Group Report at 62.

Cost considerations dictate that satellites will have unchallenged access outside of high-density routes for the foreseeable future. Fiber optic cables can only carry traffic along a linear path, and need significant traffic levels to sustain their costs. Although Comsat attempts to downplay the cost differences between satellites and cables in its Petition (at 31), elsewhere Comsat's vice president of international regulatory affairs has argued "[s]atellites are more cost-effective than cable lines," estimating that "[t]he cost of wiring American homes with fiber optic cable ... [is] between 200 and 400 billion and will take at least two decades to accomplish," and posing the question "what that cost would be if you had to extend it to the world." Space News (Aug. 1-7, 1994) at 17.

The cost advantages of satellites will take on increasing significance in the future. Developing countries and remote regions are the growth areas for public switched traffic. As these areas attempt to enter the modern communications age, satellites offer an instant and cost-effective opportunity to establish a communications infrastructure. Comsat's statutory monopoly will prove invaluable as these markets continue to develop.

Moreover, Comsat's empirical claims are suspect, given its prior (and inconsistent) statements. Despite the dramatic increase in international cable capacity between 1985 and 1992, Comsat's previously represented to the Commission that its "market share for switched-voice traffic" had declined only marginally, from "approximately sixty percent in the mid-1980s . . . to approach[ing] fifty percent in 1992." Comsat Rate Cap Petition at 10. Similarly, last year Comsat told its shareholders that "[h]alf of U.S. international voice traffic ... go[es] by satellite," and "[m]ost of that goes ... under Comsat World Systems contracts." Comsat 1993 Annual Report, p. 4. Given Comsat's earlier statements, scant credence should be given to the more grandiose claims of competition in Comsat's Petition. See, e.g., Brattle Group Report at 61-62 (putting Comsat's switched service market share somewhere between 28% and 47%).

These circumstances make Comsat a formidable competitor in all regions. In high traffic locations, Comsat is assured of substantial traffic by long-term agreements, the embedded investment that foreign communications entities have in the Intelsat system, and the desire of carriers to diversify their traffic and have restoration capacity. In thin-route and developing areas, Comsat is king, because laying fiber optic cable

would be cost-prohibitive. By any fair standard, therefore, Comsat continues to possess market power in the public switched services marketplace.

B. COMSAT FACES MINIMAL PUBLIC SWITCHED COMPETITION FROM SEPARATE SYSTEMS

Insofar as switched voice traffic is concerned, Comsat effectively faces no competition from separate systems. Until this March, separate systems could not provide more than 100 circuits of switched-voice traffic. Memorandum Opinion, Order, and Authorization, DA 94-192 (March 8, 1994). At present, therefore, separate system capacity in the public switched market is virtually non-existent. Although the Commission authorized PanAmSat and Columbia this March to provide up to 1,250 switched-voice circuits, it remains to be seen what significance that authority has for Comsat's market power. In analogous circumstances, the Commission long ago mandated competition between AT&T and other service providers in the domestic long distance telephone market. Although AT&T's competitors have developed into some of the largest telecommunications companies in the world, AT&T continues to have market power, and the Commission regulates it as a dominant carrier.

In the case of separate systems, a variety of factors limit the ability of separate systems to compete with Comsat for public switched service customers. Some of these factors are reminiscent of the considerations that limit competition between Comsat and undersea cables. For example, Comsat's long-term contracts and long time contracts held by cable system operators preclude separate systems from entering a significant portion of the market for years to come.

In addition, in contrast with Comsat's guaranteed access to most overseas points by virtue of its Intelsat monopoly, separate systems face barriers to entry overseas. This is particularly significant given the Commission's finding that "[t]he most significant entry barrier in international communications is the need to obtain an operating agreement before providing a particular service to a particular country." International Competitive Carrier Policies, *supra*, 102 F.C.C.2d at 827. Before separate systems can obtain an operating agreement in a country, the country must have initiated or associated with a consultation for the separate system. Public switched services require a separate consultation, so that even in countries that had previously consulted for private line and video services, further action is required. The Signatory or Party that decides whether to consult frequently either is, or controls, the telecommunications entity that has invested in Intelsat and undersea cables, and with which the separate system will be competing if a consultation is approved. Even if an Article XIV(d)

consultation occurs, moreover, the party with which the separate system needs an operating agreement also is frequently an investor in Intelsat and undersea cables.

Certain other factors further limit the potential for competition. In the Atlantic Ocean Region, there is only one fully-dedicated separate systems satellite (PAS-1), and it is virtually filled to capacity with non-public switched traffic. Columbia has available a limited number of C-band transponders on a NASA satellite. In the Pacific Ocean Region, there were no dedicated U.S. separate satellites until last month (Columbia has the same number of C-band transponders on a NASA satellite in this region), and now there is one such satellite. There are no U.S. separate satellites in the Indian Ocean Region. By way of contrast, Intelsat has 20 satellites in orbit, has plans to send up 14 more in the next few years (some as replacements), and will be doubling its capacity in that time. Intelsat has full global connectivity, and lays claim to the lion's share of desirable orbital locations for international service.

In sum, the competition provided by separate systems for public switched services is *de minimis* at present, and it is unclear when, or whether, separate systems will be a full-fledged competitor for public switched customers. In these circumstances, concerns about Comsat's market power remain as valid as ever.

IV. CLASSIFYING COMSAT AS NON-DOMINANT FOR PURPOSES OF ITS NON-PUBLIC SWITCHED TARIFF OFFERINGS WOULD EXACERBATE THE RISKS OF CROSS-SUBSIDIZATION AND OTHER ABUSES.

Comsat's request for non-dominant treatment of its tariff filings is inextricably intertwined with the structure in which Comsat operates its jurisdictional businesses. Until issues concerning Comsat's structure are resolved, minimizing the oversight of Comsat's tariff practices would be contrary to the public interest.

Comsat's public switched and non-public switched Intelsat services presently reside under one roof. Comsat World Systems is the exclusive provider of Comsat's public switched, private line, and video Intelsat space segment services.

This structure is rife with the opportunity for cross-subsidization and other anti-competitive conduct. As discussed above, Comsat's statutory monopoly and its sheltered market enable it to reap monopoly profits in the public switched services market. Comsat then can use its monopoly profits and power to cross-subsidize and compete unfairly in the market for video and private line services, where it competes with separate systems. Because of this potential for abuse, PanAmSat has called for structural separation of Comsat's public switched and non-public switched Intelsat

services.³ Similarly, the government's interagency task force is considering structural issues relating to Comsat.

Minimizing government oversight of Comsat's video and private line tariff filings at this stage only would exacerbate matters. So long as a single Comsat entity offers both competitive and non-competitive jurisdictional services, it is imperative that Comsat's tariff filings be subject to the closest of scrutiny. Comsat's Petition puts the cart of reduced government oversight in front of the horse of structural protection.

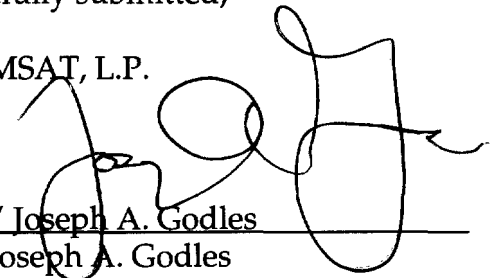
On the other hand, once Comsat's competitive and non-competitive jurisdictional businesses have been properly separated, PanAmSat would have no objection to applying streamlined tariff procedures to Comsat's competitive tariff filings. In fact, over two years ago, PanAmSat advocated that Comsat be freed of dominant carrier regulation "for its competitive services once structural protections are in place."⁴ Given Comsat's current structure, however, maintaining the status quo for tariff procedures is imperative.

V. CONCLUSION

For the reasons stated herein, Comsat's Petition should be denied.

Respectfully submitted,

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³ See PanAmSat's Petition to Reopen Proceeding (CC Docket No. 80-634), filed May 12, 1992.

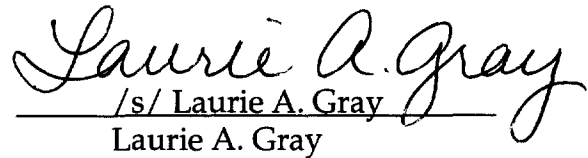
⁴ Petition to Reopen Proceeding, supra, at 17.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition of PanAmSat, L.P. was sent by first-class mail, postage prepaid, this 25th day of August, 1994, to each of the following:

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